

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Ellman	Team: Squad #8	CCRB Case #: 201708201	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/26/2017 1:30 AM	Location of Incident: Southwest corner of Astoria Boulevard and 31st Street	Precinct: 114	18 Mo. SOL 3/26/2019	EO SOL 3/26/2019	
Date/Time CV Reported Tue, 09/26/2017 4:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/05/2017 12:04 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Connor Lichte	04856	951919	114 PCT
2. POM Michael Kenefick	13457	951867	114 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Sansai Hongthong	00388	935029	114 PCT
2. CPT Michael Gibbs	00000	906330	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Kenefick	Abuse: Police Officer Michael Kenefick stopped § 87(2)(b)	
B.POM Connor Lichte	Abuse: Police Officer Connor Lichte stopped § 87(2)(b)	
C.POM Connor Lichte	Discourtesy: Police Officer Connor Lichte spoke discourteously to § 87(2)(b)	
D.POM Connor Lichte	Off. Language: Police Officer Connor Lichte made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
E.POM Connor Lichte	Force: Police Officer Connor Lichte used physical force against § 87(2)(b)	
F.POM Connor Lichte	Force: Police Officer Connor Lichte used physical force against § 87(2)(b)	

### Case Summary

On September 26, 2017, at approximately 1:30 a.m., § 87(2)(b) was walking on Astoria Blvd. in Queens toward his parked car. PO Michael Kenefick and PO Connor Lichte, both of the 114th Precinct, approached in an RMP driven by PO Lichte. The officers asked § 87(2)(b) for his ID, and § 87(2)(b) refused. (**Allegations A, B—Abuse of Authority: Stop,** § 87(2)(g) PO Kenefick told § 87(2)(b) that he witnessed § 87(2)(b) publicly urinating, which § 87(2)(b) denied, and then allegedly called § 87(2)(b) a “fucking faggot.” (**Allegation C—Discourtesy: Word,** § 87(2)(g) **Allegation D—Offensive Language: Sexual orientation,** § 87(2)(g)

§ 87(2)(b) argued with PO Lichte, who then forcefully pushed § 87(2)(b) (**Allegation E—Force: Push,** § 87(2)(g) § 87(2)(b) fell backwards, and hit his head on a parked car. While § 87(2)(b) was on the ground, PO Lichte allegedly kicked him in the face. (**Allegation F—Force: Kick,** § 87(2)(g)

Video could not be obtained for this incident. The IAB investigation into this case was obtained via Reznick request, and includes a video of § 87(2)(b) walking about 30 minutes before this incident. In the video, it appears as though § 87(2)(b) is in control of his faculties. (Board Review 25) Otherwise, the IAB file includes no new, pertinent information.

### Findings and Recommendations

**Allegation A: Abuse of Authority—Police Officer Michael Kenefick stopped** § 87(2)(b)

**Allegation B: Abuse of Authority—Police Officer Connor Lichte stopped** § 87(2)(b)

§ 87(2)(b) told medical staff at Mount Sinai Queens that police approached him while he was texting because they thought he was urinating. (Board Review 01)

Shortly before 1:30 a.m., § 87(2)(b) met up with his friends visiting from out-of-town, § 87(2)(b) and § 87(2)(b) to take them back to his apartment, where they were staying. § 87(2)(b) and § 87(2)(b) had been bar-hopping, but § 87(2)(b) did not join them. § 87(2)(b) had two vodka soda cocktails between 8 p.m. and 9 p.m. the night before, but was not intoxicated by the time he met his friends. The three walked in the direction of § 87(2)(b)'s car. § 87(2)(b) walked under the elevated train on Astoria Blvd. approximately fifteen feet behind his friends, and was looking down at his cell phone while walking. § 87(2)(b) stated that he held his phone with two hands at his waist, and occasionally stopped in this position in the course of walking. § 87(2)(b) had been walking for less than a minute when a marked NYPD vehicle pulled up from behind him. PO Kenefick and PO Lichte jumped out of the vehicle and asked § 87(2)(b) for ID. § 87(2)(b) asked why he needed to provide identification. PO Kenefick told § 87(2)(b) that he saw him urinating moments before. § 87(2)(b) denied that he was urinating and asked PO Kenefick to locate where he allegedly urinated. § 87(2)(b) (Board Review 02)

In a phone statement, § 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) were walking to § 87(2)(b)'s vehicle, with § 87(2)(b) walking a few steps behind § 87(2)(b) and § 87(2)(b) stated that he had previously been drinking, but § 87(2)(b) had not and was not intoxicated at the time. Officers approached and asked § 87(2)(b) for his ID. § 87(2)(b) asked why, and the officer stated they saw him urinating. § 87(2)(b) denied he was urinating, and

stated he was looking down and holding his cell phone. § 87(2)(b) stated he never saw § 87(2)(b) urinating on the street. (Board Review 03)

PO Kenefick was the passenger of the RMP. PO Kenefick stated the area was well-illuminated by streetlights and estimated that PO Lichte was driving at 5 mph. PO Kenefick saw § 87(2)(b) approximately 15-20 feet away, urinating between two cars in the right-most parking lane. § 87(2)(b) was faced toward the street, and PO Kenefick saw § 87(2)(b)'s penis out of his pants. § 87(2)(b) stopped urinating upon seeing the officers; PO Kenefick was certain that § 87(2)(b) stopped because he saw the RMP because there was a point at which § 87(2)(b) flinched and put his penis back into his pants. PO Kenefick stated he immediately decided to stop § 87(2)(b) for public urination and told PO Lichte to stop the car. PO Kenefick did not believe PO Lichte saw § 87(2)(b) urinating. PO Kenefick stated his intention at this time was to issue § 87(2)(b) a C-summons for public urination, and to perform a warrant check on him. After speaking with § 87(2)(b) PO Kenefick believed he was intoxicated. (Board Review 04)

PO Lichte was the operator of the RMP. PO Lichte did not see § 87(2)(b) urinate. PO Lichte stopped the car upon PO Kenefick telling him about § 87(2)(b). The officers approached § 87(2)(b) with the intention of writing a summons for the public urination, and asked § 87(2)(b) for his ID immediately upon approach. PO Lichte did not recall § 87(2)(b) ever denying he was urinating or ever claiming he had been on his phone, and did not recall seeing a wet area on the street or sidewalk. PO Lichte did not know if § 87(2)(b) had a cell phone with him at the time. (Board Review 05)

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**Allegation C: Discourtesy—Police Officer Connor Lichte spoke discourteously to § 87(2)(b)**

**Allegation D: Offensive Language—Police Officer Connor Lichte made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)**

§ 87(2)(b) maintained that he was not urinating, and told PO Kenefick and PO Lichte that he knew his rights and was not going to give them his ID. § 87(2)(b) and PO Lichte began arguing. § 87(2)(b) was angry and cursing during this exchange, and called PO Lichte an “asshole.” PO Lichte called § 87(2)(b) a “fucking faggot” amidst this exchange, though § 87(2)(b) could not recall precisely when.

§ 87(2)(b) recalled § 87(2)(b) being angry and engaging in tense conversation with the officers, but did not recall any officers cursing at § 87(2)(b) or calling him a “fucking faggot.”

PO Kenefick stated he asked § 87(2)(b) to come over to their vehicle, and § 87(2)(b) approached “aggressively.” Officers told § 87(2)(b) that they needed his ID, and § 87(2)(b) asked why. After PO Kenefick told § 87(2)(b) that he saw him urinating, § 87(2)(b) responded, “Fuck you, I wasn’t peeing on the sidewalk,” PO Kenefick also recalled § 87(2)(b) calling him and PO Lichte “assholes.” § 87(2)(b) ultimately provided the officers with his ID, at which point PO Kenefick went back to the RMP to conduct a warrant check. At this time, § 87(2)(b) and PO Lichte continued to argue near the sidewalk. PO Kenefick described § 87(2)(b) as very aggressive, highly intoxicated, talkative, disrespectful, and slurring his words at the time. PO Kenefick could not recall how or if he and PO Lichte responded to § 87(2)(b)’s cursing. PO Kenefick stated that he never cursed at § 87(2)(b) nor did PO Lichte. PO Kenefick stated he never heard any individual at the location calling someone a “fucking faggot.”

PO Lichte stated PO Kenefick returned to the RMP after § 87(2)(b) produced his ID, while PO Lichte stood near the sidewalk with § 87(2)(b). PO Lichte recalled § 87(2)(b) being angry and raising his voice at the officers, but could not recall the substance of what § 87(2)(b) was saying. PO Lichte denied yelling or cursing at § 87(2)(b) within this exchange, and stated he never called him a “fucking faggot.”

Sgt. Hongthong arrived after Allegations C and D. Sgt. Hongthong stated that § 87(2)(b) continuously yelled but could not recall if officers raised their voice to him in return. Sgt. Hongthong recalled § 87(2)(b) using slurs, but could not recall what exactly he said. Sgt. Hongthong had no knowledge of an officer calling § 87(2)(b) a “fucking faggot.” (Board Review 06)

§ 87(2)(g)  
[REDACTED]

**Allegation E: Force—PO Connor Lichte used physical force against § 87(2)(b) (Pushed)**

**Allegation F: Force—PO Connor Lichte used physical force against § 87(2)(b) (Punched)**

Note, though § 87(2)(b)’s statement suggests someone other than PO Lichte pushed him, the allegation is pled to PO Lichte because both PO Lichte and PO Kenefick asserted PO Lichte pushed § 87(2)(b).

At 1:45 a.m., EMS was dispatched to the location. Officers called EMS to the location for intoxication, yet § 87(2)(b)’s Ambulance Call Report primarily concerns an abrasion he sustained to the right side of his head. The ACR states § 87(2)(b) was moved to the ambulance by stretcher. The ACR states that § 87(2)(b)’s injury was pain to the right side of his head and that § 87(2)(b) told EMTs that he sustained this abrasion in an altercation with officers. § 87(2)(b) is listed as being neurologically alert, and as having denied loss of consciousness and dizziness. The ACR states that § 87(2)(b) was aggressive, uncooperative, and spit at officers, yet that he was escorted to § 87(2)(b) without incident. (Board Review 07, Privileged medical documents)

§ 87(2)(b) arrived at § 87(2)(b) at § 87(2)(b). At § 87(2)(b) an intake nurse wrote § 87(2)(b) was brought to the hospital “for abrasion to right side of head, sustained after he fell to the ground when in an altercation with NYPD.” § 87(2)(b) is listed as having no history of “alcohol use”; it is unclear if § 87(2)(b) provided this information in the moment, or if it was obtained from his medical history. At 2:36 a.m., the triage nurse completed a “fall risk assessment” for § 87(2)(b) s history of falling is listed as zero, meaning he had no history of falls, and his mental status is listed as zero, meaning § 87(2)(b) s assessment of his own ability to move about was consistent with that of the medical staff. At 2:50 a.m., the same nurse took vital signs from § 87(2)(b) s level of consciousness is “alert,” his orientation level is “oriented,” and his cognition is “follows commands.” At 3:00 a.m., a different nurse completed a General Assessment of § 87(2)(b). This states that § 87(2)(b) arrived via EMS and was “assisted to stretcher.” § 87(2)(b) s eyes are listed as “PERRL,” meaning “Pupils that are Equal, Round, and Reactive to light.” § 87(2)(b) is listed as “alert” and “oriented,” and his speech is listed as “coherent.” § 87(2)(b) s Glasgow Coma Scale, which is often used to diagnose brain injury, lists § 87(2)(b) s motor response as a six, meaning he fully obeys commands, his verbal responses as a five, meaning alert and oriented, and his eyes are listed as a four, meaning his eyes opened spontaneously. The Scale states § 87(2)(b) s score was a 15, meaning he sustained a mild brain injury. At 4:08 a.m., an ER physician wrote § 87(2)(b) “...states he was texting friends while outside with his hands down and police thought he was urinating, so [patient] was pushed into a car and he hit his head on it. [Patient] currently reports [headache] with abrasion to [right] parietal region...Denies [history of] alcohol or drug use...no acute intoxication.” The physician conducted a physical exam of § 87(2)(b) and said “He is oriented to person, place and time” and sustained a “2x2cm abrasion to [right] parietal region. At 6:45 a.m., a triage nurse wrote § 87(2)(b) was sent for a CT head scan, and sustained an “abrasion to [right] side of the head [sustained post] altercation [with] police officer.” At 7:07 a.m., an ER doctor wrote § 87(2)(b) requested to leave the hospital before results of his CT scan. In § 87(2)(b) s “After Visit Summary,” this same doctor noted § 87(2)(b) had “no intracranial hemorrhage [or] displaced calvarial [skull] fracture.” At 8:48 a.m., an ER nurse wrote, “As per Dr. Gazi, received final reading of CT of the head, resulting in skull fracture. I have called 114<sup>th</sup> Precinct to inform them that it is urgent for the patient to return.” § 87(2)(b) returned to the hospital, and it was determined that his second CT scan was negative. (Board Review 01, Privileged medical documents)

§ 87(2)(b) s arrest photo, which was taken hours after the altercation upon § 87(2)(b) s processing at the stationhouse, shows a red circular patch above § 87(2)(b) s right ear. It lists § 87(2)(b) at 6’1”, 200 lbs. (Board Review 23)

§ 87(2)(b) had been arguing with PO Lichte for at most 20 seconds when PO Lichte suddenly grabbed him by his upper arms and pushed him backwards. § 87(2)(b) stumbled and fell backward from the force of PO Lichte’s push, and hit the right side of his head against the fender of a parked vehicle and fell to the ground. § 87(2)(b) believed an ambulance was called during this time. PO Lichte then grabbed § 87(2)(b) who was still on the ground, and turned him so that his stomach was on the ground. § 87(2)(b) felt a strike to the left side of his face. PO Lichte pressed his knee hard into § 87(2)(b) s back, and handcuffed him shortly thereafter; § 87(2)(b) estimated that he was on the ground like that for approximately ten seconds before being handcuffed. § 87(2)(b) spit after he was handcuffed because he had a bloody lip, not because he

was trying to spit on PO Kenefick. § 87(2)(b) provided pictures of bruising to the left side of his face taken later that day (Board Review 21), which he sustained from PO Lichte's kick. § 87(2)(b) could not close his jaw in the days following the incident, and stated he experienced ringing in his ears and blurred vision for more than a month after the incident.

§ 87(2)(b) recalled § 87(2)(b) being angry during his conversation with PO Lichte, but he did not recall § 87(2)(b) closely approaching the officers. § 87(2)(b) stated § 87(2)(b) was not doing anything when PO Lichte suddenly pushed § 87(2)(b) such that he fell backward and hit his head against a parked car. § 87(2)(b) believed § 87(2)(b) lost consciousness at this time. § 87(2)(b) stated that PO Lichte then kicked § 87(2)(b) in the head.

PO Lichte and PO Kenefick did not dispute that § 87(2)(b) fell into a parked car after physical contact with PO Lichte, but did dispute that this fall caused the documented abrasion to § 87(2)(b)'s head. Rather, the officers claim § 87(2)(b) was intoxicated and sustained his injury from intentionally going limp later in the interaction. This narrative is in PO Kenefick's arrest report (Board Review 08), PO Kenefick's TRI report (Board Review 09), PO Lichte's TRI report (Board Review 10), PO Lichte's Medical Treatment of Prisoner Report (Board Review 11), and was relayed to IAB investigators by Sgt. Hongthong via the phone. (Board Review 12)

Duty Captain Gibbs, of the 104<sup>th</sup> Precinct, stated in his supervisor's TRI that § 87(2)(b) was "found to be in a highly agitated state, unable to provide a coherent explanation for his current situation...[and] had a very pronounced odor of alcohol emanating from his person." This information was reported at approximately 4:20 a.m., roughly 2.5 hours after § 87(2)(b) was apprehended by officers. (Board Review 13)

PO Lichte provided two statements on these allegations. As aforementioned, PO Lichte recalled § 87(2)(b) as aggressive and intoxicated. PO Lichte said § 87(2)(b) continuously approached him from the sidewalk despite requests for § 87(2)(b) to step back; PO Lichte recalled § 87(2)(b) momentarily cooperating and retreating to the sidewalk only to approach again. § 87(2)(b) was speaking angrily at the time, but PO Lichte could not recall what § 87(2)(b) was saying. After asking § 87(2)(b) to step back numerous times, PO Lichte feared for his safety and put his hand up to create a safe distance between him and § 87(2)(b). PO Lichte could not articulate why he believed § 87(2)(b) might be dangerous, and could not recall if § 87(2)(b) was moving his arms at all while approaching. PO Lichte did not recall pushing § 87(2)(b). Rather, PO Lichte stated he extended his arm upwards and outwards, and that § 87(2)(b) then walked into PO Lichte's already-extended hand. PO Lichte did not know the speed of § 87(2)(b)'s approach or the distance between the two of them at the point PO Lichte extended his arm, nor could he recall if he extended one arm or two. PO Lichte made contact with § 87(2)(b)'s chest. § 87(2)(b) "los[t] his balance," took a few steps backwards, and "trip[ped] over his own feet." PO Lichte stated § 87(2)(b) fell backwards and hit his back against the bumper or tire of a nearby parked vehicle, and fell onto the ground in a seated position. PO Lichte believed § 87(2)(b) simultaneously hit the car and the ground and recalled § 87(2)(b) saying something about sustaining an injury to his back. PO Lichte did not see § 87(2)(b)'s head hit the vehicle, did not recall seeing any bleeding from § 87(2)(b)'s head, and did not recall § 87(2)(b) complaining of any head pain. PO Kenefick returned from the RMP and approached PO Lichte and § 87(2)(b) at this time. § 87(2)(b) did not immediately get back up to his feet, but eventually stood up on his own. § 87(2)(b) sat back down

on the ground shortly after standing up; PO Lichte said § 87(2)(b) did this voluntarily and with control of his body, and that § 87(2)(b) did not appear to be dizzy or to have lost consciousness.

PO Lichte did not know who called for an ambulance, but said EMS was called at this time to “make sure § 87(2)(b) is] okay,” in regards to the fall. When informed that the radio request actually concerned an intoxicated individual, PO Lichte did not know why that information was relayed and did not recall any conversation with PO Kenefick about calling an ambulance for § 87(2)(b) being intoxicated. PO Lichte said EMS is called for intoxicated individuals in circumstances where they appear unable to walk or care for themselves; PO Lichte believed this applied to § 87(2)(b) “to some degree.” § 87(2)(b) was handcuffed prior to the ambulance’s arrival, and PO Lichte believed this took place while § 87(2)(b) was standing; PO Lichte had no memory of § 87(2)(b) ever laying on his stomach during this time. The ambulance parked a few car lengths away from § 87(2)(b) in the inner-lane of traffic, at which point PO Lichte and PO Kenefick picked § 87(2)(b) up off the ground and began walking him toward the ambulance. PO Lichte believed § 87(2)(b) was capable of walking “with assistance”; this assistance entailed walking beside § 87(2)(b) with a hold on his upper-arm area with one hand, while PO Kenefick held him by the other arm. A stretcher was not used to transport § 87(2)(b) and did not know the circumstances that would warrant a stretcher. PO Lichte did not know if he and PO Kenefick started walking § 87(2)(b) to the ambulance immediately upon EMS’s arrival, nor did he know where EMTs were situated at the time or if they even exited the ambulance. PO Lichte and PO Kenefick started walking § 87(2)(b) to the ambulance, and after “a few steps,” § 87(2)(b) “drop[ped] his feet out,” causing him, PO Lichte, and PO Kenefick to fall to the ground. PO Lichte stated that § 87(2)(b) intentionally fell to the ground, and that he “didn’t want to walk anymore” and “dropped his legs out.” PO Lichte was on the ground for a few seconds after this fall, and believed § 87(2)(b) spat at PO Kenefick during this time.

PO Lichte did not know how § 87(2)(b) was ultimately transported to the ambulance, and if EMTs were involved. PO Lichte did not recall seeing any injury to § 87(2)(b)’s head nor hearing § 87(2)(b) articulate any medical complaints to EMS. PO Lichte did not know if the occurrence of the second fall was ever relayed to EMS. PO Lichte travelled in the ambulance with § 87(2)(b) and stayed at § 87(2)(b) with § 87(2)(b) before he transported § 87(2)(b) to the 114<sup>th</sup> Precinct stationhouse hours later. PO Lichte had no knowledge of § 87(2)(b) sustaining a possible head trauma. (Board Reviews 05, 24)

PO Kenefick’s recollection is largely consistent with PO Lichte’s testimony. PO Kenefick also recalled § 87(2)(b) as intoxicated, and stated § 87(2)(b) loudly and repeatedly asked why he was being stopped while PO Kenefick conducted his warrant check. PO Kenefick stated § 87(2)(b) continuously approached PO Lichte, who had asked him to step back. PO Kenefick recalled § 87(2)(b) getting within an “arm’s length” of PO Lichte such that he was “basically chest bumping” him, but clarified that § 87(2)(b) never physically touched PO Lichte nor did anything menacing with his body. PO Kenefick stated PO Lichte extended his arm to “create a safe distance” away from § 87(2)(b) which caused § 87(2)(b) to fall backwards, hit his back against a parked vehicle, and land on the ground on his rear; PO Kenefick described this as a “push” in his CCRB interview and a “shove” in § 87(2)(b)’s arrest report. PO Kenefick similarly recounted § 87(2)(b) intentionally falling to the ground while being walked to an ambulance, yet whereas PO Lichte

said this happened near immediately, PO Kenefick recalled it happening midway to the ambulance.

Sgt. Hongthong arrived to the location after EMS had arrived at the scene. PO Lichte and PO Kenefick told Sgt. Hongthong that § 87(2)(b) approached the officers as they were preparing his summons and got “in their face.” The officers told Sgt. Hongthong that they gave § 87(2)(b) several commands to stay still and give the officers space, but § 87(2)(b) refused to cooperate with their orders. The officers then decided to arrest § 87(2)(b) for OGA. Sgt. Hongthong also believed officers told him that § 87(2)(b) was flailing his arms in an aggressive manner. After he arrived, Sgt. Hongthong stated he, PO Kenefick, and PO Lichte accompanied § 87(2)(b) to the ambulance. Sgt. Hongthong recalled holding § 87(2)(b) by the arm, and stated § 87(2)(b) was walking with the officers until approximately halfway to the ambulance, when § 87(2)(b)'s body went limp. § 87(2)(b) fell and landed on his side. Sgt. Hongthong recalled § 87(2)(b) hitting the right side of his head against the ground, and stated that a “scrape” was visible on the right side of his head. When on the ground, § 87(2)(b) was on his back and complaining that he could not stand up. Officers went to pick § 87(2)(b) up off the ground, at which point § 87(2)(b) started spitting at officers and attempting to kick them. Sgt. Hongthong believed § 87(2)(b)'s spit hit PO Kenefick, yet did not believe any of § 87(2)(b)'s kicks made contact. Sgt. Hongthong then instructed EMS to get a spit mask for § 87(2)(b).

EMT § 87(2)(b) did not recall this event. (Board Review 14)

EMT § 87(2)(b) only recalled this incident after reviewing the ACR. EMT § 87(2)(b) recalled § 87(2)(b) sitting on the ground upon his arrival, and did not believe he was handcuffed at the time. EMT § 87(2)(b) recalled § 87(2)(b) as being “a little out of it,” and stated he smelled of alcohol. EMT § 87(2)(b) did not recall seeing any injuries on § 87(2)(b) or seeing him bleed, and said he did not recall seeing or hearing of a physical altercation between § 87(2)(b) and the officers. EMT § 87(2)(b) remembered § 87(2)(b) spitting at PO Kenefick, and believed § 87(2)(b) was handcuffed after doing so. EMT § 87(2)(b) did not recall walking § 87(2)(b) to the ambulance or § 87(2)(b) falling while en route to the ambulance. EMT § 87(2)(b) did not independently recall lodging § 87(2)(b) in the ambulance, but noted that, per the ACR, § 87(2)(b) was transported to the ambulance by stretcher. The fall as described by PO Lichte and PO Kenefick was relayed to EMT § 87(2)(b) who stated such a situation is highly unlikely per FDNY procedure. Intoxicated individuals are typically transported via stretcher for precisely the reason that they might fall while walking, and, in such a circumstance, the stretcher would come to the individual in need of assistance, not the other way around. Further, EMTs would likely be in the immediate vicinity in the event officers were walking an individual to an ambulance. EMT § 87(2)(b) stated that, if officers were to walk an individual to the ambulance, EMTs would be standing in very close proximity. EMT § 87(2)(b) recalled no conversation about § 87(2)(b) sustaining a head injury, no conversation about § 87(2)(b) falling into a vehicle, nor did he hear anything about a physical altercation between § 87(2)(b) and officers. EMT § 87(2)(b) stated that head trauma is typically treated with special precaution. (Board Review 15)



Per Patrol Guide Procedure 221-01, Force Guidelines: (Board Review 16)

**SCOPE** "...MOS will use only the reasonable force necessary to gain control or custody of a subject..."

In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, MOS, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, condition of the subject in comparison to MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a narcotic which would affect pain tolerance or increase the likelihood of violence

PO Lichte and PO Kenefick's claim that § 87(2)(b)'s head injury resulted from his own drunken, intentional fall is absent from all available third-party evidence.

First, the ACR for this incident states that § 87(2)(b) was placed into an ambulance using a stretcher, and that this took place without incident.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

“coherent.” Last, nothing about § 87(2)(b) s movements in the IAB footage suggest he was anything but in control of his faculties.

Last, though Captain Gibbs’ TRI implies that § 87(2)(b) was still actively intoxicated more than two hours after his arrest, a § 87(2)(b) physician near-concurrently stated the opposite. Captain Gibbs wrote the TRI narrative in PO Lichte’s memo book at 4:20 a.m., and yet a doctor wrote at 4:08 a.m. that § 87(2)(b) had no “acute intoxication.” Similarly, though Captain Gibbs’ TRI states § 87(2)(b) was “unable to provide a coherent explanation for his current situation,” § 87(2)(b) s medical documents show he repeatedly told medical staff a coherent, consistent story as to how he injured his head.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 17)
- PO Kenefick has been a member of service for six years and this is the first CCRB allegation to which he has been a subject. (Board Review 19)
- PO Lichte has been a member of service for six years and this is the first CCRB allegation to which he has been a subject. (Board Review 18)

**Mediation, Civil and Criminal Histories**

- § 87(2)(b), § 87(2)(a) 160.50, § 87(2)(c) (impair contract awards or CBAs)
- § 87(2)(b) did not file a Notice of Claim with the New York City Office of the Comptroller in relation to this incident. (Board Review 22)
- This case is not eligible for mediation.

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Squad No.: 8

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date